

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

SELECT COMMITTEE ON REDISTRICTING AND APPORTIONMENT

Call to Order: By **CHAIRMAN GREGORY D. BARKUS**, on January 30, 2003 at 8:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Gregory D. Barkus, Chairman (R)
Sen. Gerald Pease (D)
Sen. Fred Thomas (R)
Rep. Joey Jayne (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SR 2, 1/29/2003
Executive Action: SR 2

HEARING ON SR 2

Sponsor: SENATOR GREGORY BARKUS, SD 39, Kalispell

Proponents: SEN. FRED THOMAS, SD 31, Stevensville

Opponents: Bob Ream, Chair Montana Democratic Party
SEN. GERALD PEASE, SD 3, Lodge Grass
REP. DAVE GALLIK, HD 52, Helena
REP. CAROL JUNEAU, HD 85, Browning
REP. NORMA BIXBY, HD 5, Lame Deer
REP. JOEY JAYNE, HD 73, Arlee
Stanley Juneau
Commissioner Joe Lamson

Opening Statement by Sponsor:

SENATOR GREGORY BARKUS, SD 39, Kalispell, testified he was appointed to the **Districting and Apportionment Commission** as a result of the untimely passing of **REP. PAUL SLITER** who's wife, **Elaine Sliter**, was sitting on the Commission when she was appointed to fill out her husband's term in the House. He described being warned of the partisan nature of the Commission and told he would have no voice. The criteria adopted by the Commission prior to his appointment is laid out clearly in the Resolution including population equality and compact districts. Ignoring other minority groups in the state of Montana, the commission used as the predominant criteria in the selection of six Indian House districts and three Senate districts. The Commission failed to adopt a criteria regarding existing district lines. They violated their own adopted criteria by dividing many communities--cities, towns and counties--while giving little regard to keeping communities of interest intact. This failure to keep communities of interest intact and dividing these communities creates a lot of cynicism among voters, he contended. It creates confusion at the polls and in campaigns. The creation of the Native American Indian districts was an attempt to settle the *Old Person v. Cooney* lawsuit, which failed in courts three times. He reasoned that Native Americans were well represented on the Commission and in the audience. He attended the first hearing in Great Falls, Montana and the process was always the same. **Susan Fox, Legislative Services**, would set up the boards showing plans 100, 200, 300, 400 and in some cases 500, explaining the rationale for each of the plans. The staff attorney would go through the criteria and talk about the discretionary and mandatory criteria. They established the Great Falls and north-central region as a starting point for a reason that was unclear at that time. People would speak about the plan they liked the best. Partisan politics appeared as many testified in support of Plan 300. The first executive action was held in Billings, his last meeting on the Commission. He then realized what had actually happened. They had six hearings, Great Falls, Browning, Havre, Glasgow, and he was unable to make Miles City but went to Billings and Lewistown. Testimony in Glasgow was clearly in favor of Plan 200; **REP. FRANK SMITH** testified in favor of Plan 200. Plan 200 divided the areas in lines of community of interest north and south rather than the long way of east and west north of Highway 2 or south of Highway 2. His motion to adopt Plan 200 was voted down 3-2, and Plan 300 was voted in 3-2. He contended that the Commission squandered taxpayer dollars. Staffers traveled the state of Montana visiting with County Commissioners, election officials, clerk and recorders, developing three good plans which were all ignored. They ignored the majority for the minorities. They used the

Commission and staff as props for a bad plan. He advised the plan must be rejected and redone.

Proponents' Testimony:

SEN. FRED THOMAS, SD 31, Stevensville, stated for the record that he was a proponent of SR 2.

Opponents' Testimony:

Bob Ream, Chair Montana Democratic Party, Helena, testified he had been the Chair of the party since 1997 and was speaking on behalf of the party. He advised there is no such thing as a Republican seat or a Democratic seat. The house districts belong to the people of those districts, not to those parties. It boils down to the individuals running for office and how hard they work and who they are. That was proved in two significant races the previous fall--**REP. PAT WAGMAN**, Bozeman, won a seat that Democrats had held for 30 years and **REP. NORMAN BALLANTYNE** won a seat that had been held by Republicans for 30 years, defeating an incumbent. He testified he had been elected to the **Montana House of Representatives** in 1982 and served for 8 consecutive sessions for Missoula County. For the first two years, he served all of rural eastern Missoula County to the Beavertail Hill 30 miles east of Missoula. It was a district that had been held by Republicans for a long time, but with a lot of hard work he won the seat. After his first campaign, the district was dramatically changed due to redistricting to an area west of Rattlesnake Creek where he lived. He was still in the district but it was a much different district and he lost over half his constituents and three-quarters of the geographic area. In the next redistricting, his district resembled the original district which was more Republican. Both times there was substantial change in the constituent base and those changes did not happen without political bias. He commented that in the last reapportionment, Missoula County had nine seats in the House but only three Senate seats--the other three were pulled off into different directions. The 1992 Commission was clearly dominated by Republicans and the effect of their plan was painfully obvious to Democrats in the next election. Democrats lost 14 seats in the House, and 11 seats in the Senate leading to the lowest levels of Democratic representation in decades and certainly not proportionate to the population of Democrats in Montana, he stated. The assertion that the 1992 Commission was balanced and bipartisan in nature is pure hogwash, he contended. He did not think Democrats would win 14 House seats and 11 Senate seats in the next election. He stated **Mike Dennison, Great Falls Tribune**, did an analysis of Plan 300 pointing out there were 30 House districts that would tend to go Democrat and 40 that would go

Republican with the other three being swing districts. Even under Plan 300 Republicans start out with a ten seat advantage. Plan 300 creates more swing districts and more chances for people to elect the person of their choice. Either party has a chance to win and the determining factor would be the ideas and the responsiveness of the candidates instead of their party designation--an approach that fits Montanans, he reasoned. He reiterated there was no such thing as Republican seats or Democratic seats. Not everyone is happy with the plan, obviously, he stated, but that's inevitable and goes with the territory. He wasn't happy with the 1992 plan either for the state or for Missoula County. The 2002 plan splits fewer small towns than previously and recognizes communities of interest throughout Montana. The starting point was Glacier County because of the *Old Person* case, an appropriate decision despite the attacks on it, he professed. Montana's Native Americans are not given a chance to elect the person of their choice as the Voting Rights Act mandates, which they have been historically denied. Not only is it appropriate, but morally and ethically right consistent with Montana's Constitution. At the same time, no district was drawn based solely on race. Montana has many distinct communities. This plan respects and preserves those communities of interest. He defended the 5% deviation--the courts have used 5% and all previous commissions have used 5% and 41 other states have used 5% all with good reason--it gives enough flexibility to maintain communities of interest. For Montana 5% is only 451 people--a number smaller than some of our census blocks. The 2002 Commission had a smaller overall deviation between the largest House district in the state and the smallest than the 1992 Commission. This Commission deserves respect and recognition of their hard work to balance the voices and opinions of all Montanans. They have accomplished the delicate balance of population, communities of interest, testimony given, historic inadequacies, and what is best for Montana. He stated full support for the hard work the Commission has done to move Montana forward. On SR 2, he suggested on page 2 line 10 that the words "mean-spirited" and "partisan" be struck. This Commission like many citizen bodies in the state deserves respect and recognition. He also suggested that on page 1 that lines 20-24 be struck because it brings in an unwarranted racial factor. He distributed written testimony he had prepared to present at a hearing the previous week when he was not allowed to testify. **EXHIBIT(sds20a01)**

SEN. GERALD PEASE, SD 3, Lodge Grass, spoke in opposition to SR 2. He conferred with **REP. JOEY JAYNE** and they felt the resolution was brought forth because of the Indian language in the resolution. He felt it was a bipartisan issue between Democrats and Republicans and it was evident to him that the

Indians of this great state had been drug through it and shouldn't have been. It appeared to him the Commission chose Plan 300 because of the population increase in the Indian reservations and he felt that should not be held against them. He pointed out that the 5% deviation criteria was adopted on a motion from **Jack Rehburg**, a Republican and the Commission voted unanimously on that motion. He stated that the 1990 Commission, four Republican and one Democrat, used a higher deviation of around 9.8, Republicans gained 14 House seat and 11 Senate seats in the next election. It seemed clear to him that Native Indians of the state were being used for the purpose of defeating the Commission's purpose which was really unfair. He submitted a minority report. **EXHIBIT (sds20a02)**

REP. DAVE GALLIK, HD 52, Helena, commented they were wasting time. He advised the Republicans should give the Commission their thoughts. He declared HB 309 was unconstitutional and the Joint Select Committee was wasting taxpayer's money. The Constitution disallows any way to reject the redistricting, he held. He advised making comments and be done with it.

SEN. THOMAS advised he was taking testimony on SR 2 and would take testimony only on that resolution.

REP. CAROL JUNEAU, HD 85, Browning, expressed hope that there was adequate public notice for this hearing. She noticed only that morning that the meeting was taking place. She submitted copies of an article on Tribal leaders comments on the redistricting **EXHIBIT (sds20a03)** and another handout which she reviewed in her testimony. She had been to many meetings of the Commission and had consistently supported Plan 300 creating six majority Indian House districts and three majority Indian Senate districts. She advised she does not waver on that support and did not support the resolution. The American Indian caucus of the 58th legislature has taken a position on the matter.

EXHIBIT (sds20a04) She pointed out that American Indians were the fastest growing demographic group in Montana, there was an increase of 39% over the 1990 census, and they must have equitable representation in Montana's government. Since 1889 when Montana was made a state only four American Indian Senators ever walked the halls. Using a plus or minus 1% deviation would result in a violation of the Voting Rights Act and would change two of the Indian majority House districts as well as the Indian Senate districts in the Crow and Northern Cheyenne Reservation communities. The Crow and Northern Cheyenne people have been long active in the political process in the state of Montana and the American Indian vote in these districts cannot be diluted, she advised. The resolution contends that the American Indian populations were used as the predominant factor in the creation

of the Indian majority districts and that is not true, she held. American Indian people share many common characteristics. They have a common history, particularly in the historic relationship they have with the non-Indian people and the federal government. They share many cultural traditions such as the social events of the pow-wow season in the summer months. They have educational issues in common especially the common bond of the seven tribal colleges, many common voting patterns and many other socio-economic characteristics throughout Montana and the United States. She thought it interesting there had not been much said about the 1993 non-Indian majority districts created in the state of Montana. She commended the Commission for their efforts to create a future for Montana's leadership that gives the first people of Montana an opportunity for a more equitable voice. They have been disenfranchised far too long and are ready to step forward and take a seat at the table of state leadership on an equitable basis. She asked for a no vote on the resolution.

REP. NORMA BIXBY, HD 5, Lone Deer, advised both the Northern Cheyenne and Crow Reservations are in her district. She advised the 5% deviation had been used in 41 states; the 1% deviation is unfair. She did not see the letter from **REP. ROY BROWN** regarding the Indian Districts, but maintained there was no way to do that with a 1% deviation especially on her reservation and the Crow Indian Reservation. She believed in fairness and a fair chance at the opportunity to run for her seat again. On her reservation, the 1% deviation would decrease the Indian voting age population to 47.6% from 57.3%. On the Crow Reservation it would decrease from 55.2% to 45.5%. She maintained that would create a Voting Rights Act violation. The tribes have gone on record in the state of Montana that they will file a suit. She felt the state had better things to do than spending money on suits. They were just asking for a fair chance to be elected in the state. She also believed Plan 300 gives the opportunity for both Republicans and Democrats to be elected and felt the Commission should be commended for their hard work in assuring that all the criteria were used. The Voting Rights Act must be part of the criteria. She was disappointed that the 1% deviation in the resolution was still being considered. She advised opposing the resolution and getting on with the business of Montana and not to create any more constitutional problems.

{Tape: 1; Side: B} She denounced using tax dollars to justify a stand that the plan doesn't meet the Republican's view of what is right in Montana. Her district was created from a Republican plan but she didn't win because she's an Indian. She contended she won because she worked very hard. She wanted to continue to have that opportunity for a fair chance to do that. Skewing the numbers would make it much more difficult for her to get elected in her district. She asked for opposition to the resolution.

REP. JOEY JAYNE, HD 73, Arlee testified she was on the committee and was opposed to the resolution. As previously stated by **SEN. PEASE**, they submitted a minority report. She emphasized the committee, all 100 House members and all Senate members do not have the authority to determine who votes and who doesn't vote. They don't have the authority to determine in what district they're going to vote. That power has been given to the people of Montana by the Constitution and by statute and by common law--cases that were decided either by tribal courts, district courts in the state of Montana, the Ninth Circuit Court of Appeals, and the United States Supreme Court. She advised it was preposterous to think the legislature has the authority to say who can vote and who cannot. The Commission did its job, she held--constitutionally, legally and equitably. Yet the resolution tells them that they are "mean-spirited" and did not do their job. She, as a professional and a person, having been elected by her constituents, will not sign, adopt and approve a personal attack on people who worked very hard. Everyone did not attend all of the Commission hearings and see all the people testifying. Those voting on the resolution weren't there. The Commission used the mandatory and discretionary criteria that were unanimously adopted by the Commission on November 16, 2000. The use of the 5% rather than 1% gave the Commission the flexibility to adopt both the mandatory and discretionary criteria. She advised her position is stated clearly in the minority report. She repeated the committee did not have the right to tell someone they can or cannot vote or where they can or cannot vote. That is left up to the people of Montana and they already spoke. Its in the Constitution and the procedure is in the Constitution. Its statutory and has been determined by common law. She said the resolution should be opposed.

Stanley Juneau, taxpayer and citizen, stated he was also the Superintendent of Schools for Browning Public Schools. America is getting ready for the celebration of Lewis and Clark and the Governor is gearing up for the economic advantages that will bring to the state. His school district is putting together teaching models and methods for including Lewis and Clark in their curriculum. He noted it would be difficult to explain to students about people supporting SR 2 and opposing Plan 300 who were more concerned about Indians in Montana today than Lewis and Clark were 200 years ago.

Commissioner Joe Lamson, testified he had not planned on testifying but had tried to be more of an informational witness in the last 30 days in various hearings. Some things were said that needed to be clarified, he asserted.

SEN. THOMAS advised SR 2 was a global motion responding to him as a Commissioner. He understood **Mr. Lamson** wanted to testify as a citizen but the resolution was something that was going to be said to him in some version and some form so he should take that into consideration in his testimony.

Mr. Lamson testified he was one of the Commissioners appointed by the legislature. The Commission is staffed by the legislature. He was there on his own time as a citizen of Montana as he had devoted most of his time on the project in the last three years. He pointed out for the record that the former Commissioner **Barkus** had testified as to his perceptions and another former Commissioner **Elaine Sliter** would probably be given the courtesy of making her remarks also. He stated a lot was made about the hearing process and it was an inadequate description that people everywhere testified vehemently against Plan 300 and only in support of other plans and that anyone who spoke in favor of 300 just gave a curt little testimony that said "I support 300". He advised the record shows there were in excess of 1600 pieces of testimony received. People of both parties and both perceptions spoke enthusiastically about both plans. It disturbed him that throughout the process there was a very narrow perception of who was speaking and a degrading of their testimony if they didn't agree with a particular person. The Glasgow hearing was very hostile--the first question from the audience was basically what the heck are you doing here. Everyone kept calm but it was a very heavily weighted thing and was in the middle of the day. Many people could not get there. The testimony was how everybody in this region was for this particular plan. The Representative of the Fort Peck Reservation was there and asked, because it was a very intimidating thing for Indian people to speak at that particular hearing, if the Commission would do an additional hearing to hear their points of view as they are a major part of that particular community. The Commission had already scheduled their hearings but **Mr. Lamson** offered to travel back to Poplar at his own expense and have a hearing to take other points of view. It wasn't an official hearing but was part of the ongoing hearing process as they always left the record open. At that hearing there was a very different point of view presented as to what was fair. He pointed out that Plan 200 was supported by many of the County Commissioners at the Glasgow hearing. They thought it was a better plan for not splitting counties. When the counties that were split in that plan were added up in 200 versus 300--300 actually split fewer counties in that region as it was originally proposed as 200. That made him think something else was going on beyond what people were saying about their concerns about county lines. The process has been mostly driven by census numbers, he advised and the resolution and the minority report point that out. The decisions in the *Old Person* case had been very narrow

decisions and every decision has moved further and further toward the plaintiff's basic positions. In fact, the ultimate conclusion of the district court was that Montana have a commission sensitive to the needs of all the people of the state and this Commission is about to put forward a plan that addresses those concerns. Another concern of his was the enormous amount of time spent discussing six House districts and three Senate districts that happen to have Indian majorities and communities of interest. He was amazed by the amount of time spent both by objections by members of the Commission and by citizens that made objections around that particular case. The Indian communities deserve the same representation as anybody else. In looking through the record and the motions, all of the communities of interest are clearly identified for all the districts. He urged the committee to look at the minority report. In contrast to the resolution, it talks specifically about each finding and gives specific reasons why those are not true findings. One of his frustrations was getting very few specifics from people about changes. Time is running very tight and the Commission plans to act very quickly when they get recommendations and that was one of the reasons he has been attending things so they could move along and make those changes where they can. The legislature has spent an inordinate amount of time and the quicker the plan goes to the Secretary of State's office and becomes law, the sooner we can move on to the important issues, he maintained.

Questions from Committee Members and Responses:

SEN. THOMAS asked former **Commissioner Elaine Sliter** to identify herself and **Ms. Sliter** stated her name and that she was a former member of the Redistricting Commission.

SEN. THOMAS stated the minority report at the bottom of page two reflected a motion was made by Commissioner Rehberg for the 5% criteria and asked if that was accurate

Ms. Sliter advised she believed she actually made that motion to accept that criteria rather than **Commissioner Rehberg**. She recalled there was no discussion on population equality--the criteria was presented to the committee as the same criteria as used last time and it works well. Given that, they proceeded forward with no discussion on the 5% deviation that she recollected.

SEN. THOMAS asked when the adoption of the guidelines and criteria was done, she made a motion, according to the minutes, that population equality be mandatory criteria for congressional districts. He asked what she was attempting to do and how that would relate to legislative districts.

Ms. Sliter advised congressional districting was a non-issue at that time because there was one congressional district. Because that was the Congressional deviation at that time, and there was a slim possibility of a second district, 5% when dividing the entire state is a different issue than when approaching legislative districts, she explained.

SEN. THOMAS asked, as a former member of the Commission and the legislature and after hearing this morning's testimony, if she had anything to add regarding the plan and the resolution.

Ms. Sliter advised she wished to stay a neutral party and not make her feelings known about the redistricting plan and wished to keep those private to herself.

SEN. THOMAS asked **Commissioner Lamson** about his intent to move expeditiously on finalizing the plan. He advised the Constitution allows the legislature 30 days to respond to the plan and it was his understanding the plan was delivered on the first day of the legislative session. **Commission Lamson** said that was correct.

SEN. THOMAS allowed that 30 days would be February 5th.

Commissioner Lamson believed it would be midnight February 4th.

SEN. THOMAS asked of the Commission's intent to meet and discuss input from the legislature.

Commissioner Lamson said they would be glad to because the Commission has made a point of notifying the public of meetings and giving ample opportunity and advance notice unlike many of the proceedings before the legislature. They were in discussion with the various Commissioners regarding their travel schedules, but the intention was to meet soon after getting the plan. They could change their mind if they get additional specific information that would require them to do more work in changing the plan. So far, there has not been much presented that hasn't been presented to the Commission previously. They planned on giving 72 hours notice to the executive session.

SEN. THOMAS restated the legislature has until February 4th to respond; thereafter a hearing will be scheduled with at least 72 hours public notice following the midnight February 4th date.

Commissioner Lamson replied they were going to schedule an executive session.

SEN. THOMAS asked if it was accurate that the earliest that meeting could take place would be three days following February 4th.

Commissioner Lamson indicated no, they would notice it 72 hours prior to February 4th. The constitution says you don't have to take 30 days in terms of legislative recommendations.

SEN. THOMAS asked when they would notice the 72 hours.

Commissioner Lamson indicated if they were going to meet on the 5th they would probably give more than 72 hours. They would probably notice it on Saturday.

SEN. THOMAS stated it sounded as if they were going to meet on the 5th and asked if that was accurate.

Commissioner Lamson advised it would depend on travel schedules; the Chair in particular, is the most rural member.

SEN. THOMAS inquired if that meeting would not take place before the legislature has returned their comments.

Commissioner Lamson replied of course not, because they follow the constitution.

SEN. THOMAS noted that **REP. JUNEAU** made the comment that Native Americans in Montana are the fastest growing population segment. He asked if she would be willing to support a provision in future apportionments that would have growth taken into consideration in population deviations so it can be taken into account that over the next ten years the Native American population will grow in that district. He asked if she would be willing to support a provision in a future criteria that growth be taken into consideration.

REP. JUNEAU advised she would have to think about that because it might happen or might not happen depending on many factors. The population growth in the last ten years is reflective in the plan the commission has put forward and she commended them for that. She said she did not have an answer to his question.

SEN. THOMAS asked what provision of the Voting Rights Act would be violated by the use of 1% deviation criteria.

REP. JUNEAU replied the current Crow and Cheyenne Indian majority district designed in Plan 300 would be diluted to less than a majority along with the Senate district. That would include

three of the Indian voting majority districts that are proposed. That is a big percentage, she maintained.

SEN. THOMAS stated no specific provision but just a general aspect of numbers creating a dilution was what she was saying.

REP. JUNEAU claimed that using plus or minus 1% would decrease the Indian majority.

SEN. THOMAS contended there were now six Native American House members and yet the plan with this broad deviation is so needed and necessary to create six elected Democrat Native Americans to the legislature. He claimed the election results from the last few elections were all very wide margins. He wondered why it was necessary to have the wide deviation when history shows those very wide margins.

SEN. JUNEAU advised her testimony supports not only the current six House Indian majority districts but in particularly the three Indian majority Senate districts. They are needed and that was one of the main reasons she came to testify.

SEN. THOMAS asked her to respond to his question as he thought it made sense to question why the wide deviation was needed in the plan to accomplish electing six Native Americans to the House when in the past historically they've won by very wide margins and there were six now.

SEN. JUNEAU reasoned it was not a wide deviation, it was a deviation used by three commissions. It was a deviation that's been accepted, a deviation that the commission accepted and she thought it was appropriate to use. She stated she is proud of the Indian Representatives that have been elected and proud of their lone Indian Senator that has been elected. She advised moving ahead to provide better representation of American Indian people.

SEN. THOMAS advised there had been concentration on aspects in some testimony that said the very wide deviation of 10% was needed in order to accomplish Native American districts. That has already been the result by a wide margin. She had indicated the narrow deviation following "one man, one vote" concept wouldn't allow that to be accomplished. He asked by what means she drew that conclusion where there was not a 1% deviation plan drawn to compare to.

{Tape: 2; Side: A}

REP. JUNEAU indicated that her first response answered that question. She contended he was trying to make her say there was

a wide deviation and there isn't. There is a plus or minus 5% deviation that the commission accepted and used and has been used historically. The Indian legislators here today were elected by their constituents because they thought they were the best people to be elected.

SEN. THOMAS asked **REP. BIXBY** about the percentages she previously referred to.

REP. BIXBY advised she spoke to using the 1% deviation. She said the numbers were crunched to see how that deviation would work in her district. The Northern Cheyenne/Crow district would decrease from 57.3% to 47.6% and HD 30 would go from 55.2% to 45%. That could be a voting rights issue, she held.

SEN. THOMAS asked 52% of what.

REP. BIXBY replied it was 52.3% of Indian voting age population.

SEN. THOMAS asked if the 52% would be Crow membership.

REP. BIXBY indicated it would be American Indians. There are other tribes on the reservations, not just Crow and Northern Cheyenne. The population is determined in the census.

SEN. THOMAS said she indicated she didn't get elected because she is Native American and that she gets elected because she represents the public and she campaigns and they elect the best person. If that's the case, why is it necessary to draw SD 1 over the continental divide and link reservations when she can prove she can get elected on her own.

REP. BIXBY advised it creates an opportunity in that area for individuals to get elected. Because the Indians in those two areas have issues that bring them together and is an area that has not been represented by Indians--to have that opportunity to get elected is a very good plan. She agreed that she worked very hard to get elected. The seat has never been held by an American Indian as far back as she could remember, let alone a Democrat. Its always been held by a Republican. She felt people in that area should have an opportunity to elect the person of their choice with a district such as that developed.

SEN. THOMAS asked if she was opposed in her last election.

REP. BIXBY advised yes.

SEN. THOMAS asked about the percentage she received versus her opponent.

REP. BIXBY advised the first time she won by about 37 votes and this time by a few more. The gentleman that ran against her didn't come to the reservation. He put his signs up in one community but didn't come to talk to the people. She went to Hardin to campaign and got some of those votes.

SEN. PEASE asked **Commissioner Lamson** about using the 1% and what that would mean in his district.

Commissioner Lamson advised there had been some confusion by other members of the committee regarding the numbers. The numbers come from the total number of Native American residents in those particular districts and also gives what the projected voting age population is very specifically. HD 29 has 57.3% voting age American Indian voters in the Northern Cheyenne Crow district that **REP. BIXBY** represents. The Crow district has 55.2% and population drove those numbers. In those areas, the Indian population is concentrated primarily on the Northern Cheyenne and Crow reservations. The deviation, because they are on the low end, would require more individuals to be put into that particular district. There are no large Native American communities outside of those districts to do that so the impact can be projected. They computed what the Indian voting age population would be if they went to 1% to achieve that. He pointed out that Indians went from majority to minority status which is a dilution of the Voting Rights Act. The Cheyenne and their Crow brothers will be in court, according to the paper, and it won't be *Old Person v. Brown* it will be *Bixby v. Brown* because of the violation there.

REP. MICHAEL LANGE asked about page 2 line 10 and the words "partisan fashion".

Mr. Ream replied "mean-spirited partisan fashion".

REP. LANGE indicated he was talking about the words after that and if he wanted to include the other two he'd ask. He asked about the two words following "partisan fashion". He wondered if the public pays close attention to the goings on of the legislature and the districting commission and all of the things related to this process over the last couple of years.

Mr. Ream advised the 2002 held more hearings and there was more public involvement than there was with the 1992 commission. In that sense there was more participation.

REP. LANGE asked if it serves the people of Montana well when either party controls a commission.

Mr. Ream stated he had thought about that a lot and there isn't an easy answer to setting up a commission like this. He thought the Constitution was correct in severing it from the legislative branch and he didn't know beyond that how it could be done. It would require a change in the Constitution. He said he honestly did not know. He said it had gone both ways--the last commission was clearly Republican and this one arguably was clearly Democratic dominated--we've swung back and forth.

REP. LANGE advised in 1996 he ran as Democratic candidate for the Montana state senate and lost his race.

Mr. Ream said he was sorry to hear that.

REP. LANGE said so was he--it was a lot of work. In the last election cycle and again in this election cycle he ran as a Republican candidate in the House. He lost last time and won this time. His background is different than most candidates or most people that were serving--in fact he may be the only one in the legislature who has sought office in both parties. He observed in those election cycles that the public wasn't necessarily as concerned about which party he was in but rather in the viewpoints he held, the issues he represented, and the things he would do for his constituency irregardless of his party. He hoped that any candidate running for public office in Montana would do his or her best to represent the needs of the district and uphold the Constitution. He felt that unless something happens to change the process, we are destined to go on a pendulum every ten years of political power pitting the needs of the parties over the needs of the voters. He asked if **Mr. Ream** would be in favor of a commission when future plans were adopted based solely on criteria and good solid voter rights things as opposed to just partisan control.

Mr. Ream advised he'd have to see the details of it. He thought that having more districts that are "swing" districts is a good thing because they accomplish what **REP. LANGE** was saying. He thought this plan does provide more swing districts than the previous plan. There were more that were solidly one side or the other in the previous plan. He would have to see what **REP. LANGE** was proposing before he could comment. He advised it is hard to avoid partisanship in each of the three branches of government.

SEN. THOMAS asked **Mr. Ream** about his testimony that two Democrats were appointed by two Democrat leaders and two Republicans were appointed by two Republican leaders in 1992 and those four people voted together and the chairman typically didn't vote in those proceedings. He asked if there was a turncoat on that commission.

Mr. Ream advised that **SEN. DOC NORMAN** was accepted into the Republican party last year and he appointed **Jack Pinsoneault** to the commission and **Mr. Pinsoneault** voted with the two Republicans to elect the chair of the commission. It was a four to one commission in that case.

SEN. THOMAS advised that the votes weren't four to one, they were four to zero with the other Democrat member going along with the plan. Based on those votes--its like making it up; its not provable, he claimed.

Mr. Ream indicated that much has been made about **Jim Pasma** and how cooperative he was. He felt **Mr. Pasma** was a very astute individual who recognized he was in a four to one minority and he went along with the commission most of the time. Unfortunately, he's deceased, **Mr. Ream** stated, and could not be here to testify. **Mr. Ream** felt **Mr. Pasma** would certainly argue that he picked his shots carefully and on those cases where he did make a good argument and in some cases because of his cooperation was able to get what he wanted on some districts.

SEN. THOMAS stated the current plan with the wide deviation of 10% is the same deviation adopted by the 1992 commission. The districts currently in place were done in 1992 with the same deviation and the same results of small urban districts and large rural and suburban districts as was proposed by this commission. The urban districts that won't grow were smaller and the rural and suburban ones were larger. In both cases that's the case. He said he thought they both knew that would tend to favor Democrats in both scenarios, not Republicans. He asked how it could be equated that there was anything done in the 1992 redistricting that would favor the Republicans and furthermore, if he could point to a district or five districts drawn in the 1992 plan that obviously favored Republicans in that plan.

Mr. Ream said he would have to look at the data. Senate districts in Missoula County were pulled out to other counties including **SEN. THOMAS'** own county to create districts that were more strongly Republican districts and that didn't follow the community of interest in those cases.

SEN. THOMAS asked, speaking of community interest, could he find any justification for splitting Anaconda in half.

Mr. Ream advised he couldn't comment on that without looking at the rest of the area of those two districts.

SEN. THOMAS claimed it would incorporate rural Republican voters, by splitting the city of Anaconda, and would outweigh the rural

Republican voters with city of Anaconda voters which is traditionally very heavily Democrat.

Mr. Ream held he wasn't a member of the commission and couldn't comment on that.

SEN. PEASE suggested asking one of the commissioners.

SEN. THOMAS indicated he was curious to hear it from the chairman of the party.

SEN. THOMAS asked **Ms. Sliter** about the deviation motions and what was really meant with the adoption of the 5% deviation.

Ms. Sliter said her own personal opinion of the 5% deviation tool was to draw legislative districts as equally as possible. She felt the 5% deviation was there for areas where there was a geographic problem--a mountain pass or river--as well as to be used as a gerrymandering tool when necessary to get around the law to insure the Indian districts and rightly so. She thought in other areas it was their job to keep districts as even as possible other than when running into geographic areas.

SEN. THOMAS asked if her intent was to use the wide deviation to accomplish Native American districts if it was necessary and **Ms. Sliter** replied yes. He asked if beyond that, if she felt the very narrow deviation could have been accomplished amongst the rest of the districts.

Ms. Sliter indicated that, speaking strictly for herself, that would have been her intent.

Closing by Sponsor:

CHAIRMAN BARKUS found it interesting that the chairman of the Democratic party was unable to answer **REP. LANGE'S** question and that really bothered him. He thought that made it crystal clear that this was a partisan game and it will continue as long as this is the makeup of the commission. He commented that the process--the work of the staff and demonstration of the other districts was a smokescreen. Had this commission adopted a tentative plan 300 and put that out for public comment at the fourteen public hearings, there would have been a lot more testimony, he contended. He felt that people went to those hearings thinking they could support Plan 100 or 200 or 400 and that they were being heard. He did not think that was the case. He urged support for the draft resolution.

EXECUTIVE ACTION ON SR 2

SEN. PEASE noted that in the minority report on page two, that Republican **Commissioner Jack Rehberg** made the motion for the 5% criteria and **Ms. Sliter** testified that she made that motion. He said he would like to request some amendments.

SEN. THOMAS indicated there were amendments that aren't ready and asked to meet again the next day which would be plenty of time to update the report.

CHAIRMAN BARKUS advised that **Mr. Lamson** indicated they had until midnight of the 4th. He asked if there was adequate time given that time frame.

SEN. THOMAS stated it was his assessment that the resolution just needs to go through the senate and it could be amended. He thought they could meet briefly during the noon hour and adopt the amendments.

CHAIRMAN BARKUS said they could get it on the floor today.

SEN. PEASE asked since it was a resolution being proposed by the subcommittee, if it was supposed to go before **State Administration** first or just directly to the floor.

CHAIRMAN BARKUS noted it was a Senate resolution and the House is hearing their House Resolution in **State Administration** right now.

SEN. THOMAS advised the three of them would vote on the resolution.

CHAIRMAN BARKUS advised the entire committee would convene the following day to consider HB 309.

recess - 9:30

reconvene - 12:45

REP. JOEY JAYNE asked for clarification. She indicated she was the only representative in the room and it was a meeting that had been noticed for the Joint Select Committee on Redistricting and Apportionment rather than just the Senate members. She asked why a committee of the Senate did not hear SR 2 because House **State Administration** heard HR 3. She went to both meetings and felt the Joint Select Committee would have to make a decision on that. If necessary she would like to have a legal opinion on why just the three Senate members here would represent all of the Senate

on SR 2 whereas the house **State Administration Committee**, 18 or 20 or them, would vote on HR 3 to get it on the floor.

{Tape: 2; Side: B}

SEN. THOMAS indicated there must have been a mistake and he had told her earlier she didn't actually need to be here. The Senate members were the only ones who would vote because it is a Senate Resolution. He advised this is a Senate committee created by the Senate. House members were notified and he was appreciative of her being here but they are a committee standing in the senate and they would be acting on the resolution.

REP. JAYNE contended this is not a senate committee--it is a Joint Select Committee on Redistricting and Apportionment. She agreed that if he called a meeting just for the senators of the Joint Select Committee on Redistricting and Apportionment, making it legal, what would be his response. She repeated this is not a senate committee.

SEN. THOMAS asked what was her concern.

REP. JAYNE advised he didn't answer her question.

SEN. THOMAS said he did answer the question because he told her what this committee is.

REP. JAYNE asserted it is not a Senate committee.

SEN. THOMAS argued that was what they did in the Senate and he didn't know if she was there when they made the motion creating this committee but that is the case.

Motion: **SEN. THOMAS** moved that **SR 2 DO PASS. EXHIBIT(sds20a05)**

Motion: **SEN. THOMAS** moved that **SR000202.ASB BE ADOPTED. EXHIBIT(sds20a06)**

Ms. Fox explained the handout with the amendment recreated what the amendment does. **EXHIBIT(sds20a07)**

Vote: Motion that **SR000202.ASB BE ADOPTED** carried 2-1 with **PEASE** voting no.

Motion: **SEN. PEASE** moved that **SR000201.ASB BE ADOPTED. EXHIBIT(sds20a08)**

SEN. PEASE explained he wanted to strike the word "mean-spirited" on page 2 line 10.

Vote: Motion that **SR000201.ASB BE ADOPTED carried 3-0.**

SEN. PEASE advised the staff checked commission minutes and found that **Ms. Sliter's** motion concerned congressional districts and **Mr. Rehberg** moved to adopt population equality and population deviation for legislative districts.

CHAIRMAN BARKUS asked about the page number or date.

SEN PEASE indicated the date was November 16, 2000 on page 7 under Adoption of Guidelines and Criteria and continued across to page 8.

SEN. THOMAS asked if the minority report is accurate as he can make it.

SEN. PEASE answered he believed it is because on page 8 it was **Mr. Rehberg** that moved to adopt population equality and population deviation.

CHAIRMAN BARKUS asked where in the minutes did it reflect that fact.

Ms. Fox answered that the minutes refer to a copy of a report called "Draft Guidelines and Criteria for Congressional and Legislative District Commission" and it was a worksheet. The discussion of the criteria was on that worksheet.

SEN. THOMAS said it was his understanding that the minority report is referenced in the resolution and it will be attached to this resolution as it is presented by **SEN. PEASE**.

Vote: Motion that **SR 2 DO PASS carried 2-1 with PEASE voting no.**

SEN. PEASE asked where the resolution would go.

SEN. THOMAS said their intent was to report it out of committee with that motion and it would be scheduled for second reading on the floor today. That means its enrolled and it was amended.

REP. JAYNE asked about the purpose of the 8 a.m. meeting the following day.

SEN. THOMAS answered to hear HB 309.

REP. JAYNE asked if that was where she had an opportunity to present amendments.

SEN. THOMAS indicated the Senate will be hearing HB 309 tomorrow and acting on it.

REP. JAYNE asked when she had an opportunity for amendments. She said they were denying her the opportunity for amendments because she was not on **State Administration**. That compels her to ask someone to make an amendment on the House resolution and so therefore she had an objection, she stated.

SEN. THOMAS said it was a Senate Resolution.

REP. JAYNE indicated she was talking about the House Resolution that was heard.

SEN. THOMAS advised she could take it up in the House and amend it on the floor like any other resolution.

REP. JAYNE said she was speaking to the fact that this process has denied her the right with her other two people to do amendments just like they did today.

SEN. THOMAS asked in what way.

REP. JAYNE advised because she could ask one of the members of **State Administration** to do an amendment for her when they take executive action there.

SEN. THOMAS asked if she was on **State Administration**.

REP. JAYNE said she was not and that was her point--when did she get the opportunity.

SEN. THOMAS said on the floor and moved to adjourn.

ADJOURNMENT

Adjournment: 1:00 p.m.

SEN. GREGORY D. BARKUS, Chairman

PRUDENCE GILDROY, Secretary

GB/PG

EXHIBIT (sds20aad)